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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 626

SARAH B. DANNING, Trustee in Bankruptcy of the Estate of Samuel N. Sherman, dba Southern California College of Business, Bankrupt,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Sarah B. Danning, as trustee in bankruptcy of the Estate of Samuel N. Sherman, dba Southern California College of Business, prays that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Ninth Circuit, entered on August 28, 1958; and upon which a Petition for Rehearing was denied December 9, 1958. That judgment affirmed the judgment of the bankruptcy court (both that of the Referee in Bankruptcy and the United States District Court for the Southern District of California, Central Division) rendered on March 8, 1957.

Opinions Below.

The opinion and judgment of the Court of Appeals for the Ninth Circuit (259 F. 2d 305) is set forth in its entirety at pages 60-71 of the record herein and, for the convenience of this Court, is printed as an appendix to this petition. The District Court wrote no opinion but its order is included as a part of this record at pages 50 and 51. The opinion and order of the Referee in Bankruptcy are set forth in their entirety at pages 25 to 38 of the record herein.

Jurisdiction.

The judgment of the United States Court of Appeals for the Ninth Circuit was filed on August 28, 1958. [Tr. 71; App. 14]; an order of the Court of Appeals for the Ninth Circuit denying a Petition for Rehearing and Reconsideration was filed on December [redacted]958. [Tr. 108]. The jurisdiction of this court is invoked under Title 28, U. S. C., Section 1254, as amended by the Act of June 25, 1948 (Public Law 773, 80th Congress, Chapter 646, Second Session) and as further amended and under Section 24(c) of the Bankruptcy Act, 11 U. S. C., Section 47(c).

Questions Presented.

The questions here presented for determination are extraordinarily important to the administration of bankruptcy estates, but may be stated very briefly. They are as follows:

1. Does the Bankruptcy Act,[1] as amended, grant jurisdiction to courts of bankruptcy to hear and determine

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[1]Act of July 1, 1898, as amended; 11 U.S.C., Sec. 1, *et seq.*

counterclaims for affirmative relief asserted by a trustee in bankruptcy against the United States in amounts greater than the claim filed by the United States where the counterclaim arises out of the same transaction or transactions upon which the Government's claim is based?

2. Does the Bankruptcy Act, as amended, constitute the United States a creditor in a bankruptcy proceeding for all purposes?

3. Is the United States exempt from the obligation of all creditors seeking equity in bankruptcy to do equity with regard to the subject matter before the court?

Statutes Involved.

This petition requires a consideration of the following provisions of the Bankruptcy Act:

1. Section 1(11) of the Bankruptcy Act defines "creditor" as "anyone who owns a debt, demand or claim provable in bankruptcy . . ."[2]

2. Section 2(a) of the Bankruptcy Act[3] sets forth a list of specific matters with respect to which the Bankruptcy Court is given jurisdiction. The relevant specific matters are as follows:

> "(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; . . .
>
> "(6) Bring in and substitute additional persons or parties in proceedings under this Act when necessary for the complete determination of a matter in controversy;

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[2] 11 U.S.C., Chap. 1, Sec. 1(11).

[3] 11 U.S.C., Chap. 2, Sec. 11(a).